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Perman & Green, LLP
99 Hawley Lane
Stratford, CT 06614

EXAMINER	
GLESSNER, BRIAN E	
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3633	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/798,215	JANESKY, LAWRENCE M.	
	Examiner	Art Unit	
	BRIAN E. GLESSNER	3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 December 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The following office action is in response to the amendment filed on December 9, 2009. Claims 1 and 3-15 are currently pending. Claim 2 has been cancelled. Claims 1 and 3-15 stand rejected as set forth below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (4,760,674) in view of the Moisture Control Handbook "New, Low-Rise, Residential Construction" by Joseph Lstiburek with John Carmody, October 1991, hereafter referred to as "the handbook".

In regard to claim 1, Brand teaches a water-barrier and drainage system for preventing the penetration of water vapor and ground water into the crawlspace environment of a building, said crawlspace environment having a floor 18 surrounded by a substantially continuous peripheral foundation 12 enclosing said crawlspace environment beneath the building, said system comprising a continuous embossed plastic drainage panel (col. 4, lines 55-65) disposed against an upward facing surface of the floor 18 so that the panel covers the upward facing surface of the entire floor of the crawlspace (col. 3, lines 63-66) so that the panel defines a continuous barrier surface that prevents penetration of ground water and water vapor there through and prevents

penetration of groundwater and water vapor up through the floor and into the air space of the crawlspace, said plastic drainage panel being embossed to provide a plurality of spaced protuberances 33 at the underside thereof forming legs which support the drainage panel spaced from the floor of the crawlspace (figures 5, 8, and 9) to provide a water flow space adjacent the floor for the drainage of water and water vapor which penetrates up through the floor of the crawlspace or through the walls of the crawlspace. Brand does not specifically disclose that said drainage panel includes vertical extensions which extend vertically up against the interior peripheral foundation to a height above the floor/foundation interface to provide a continuous barrier against the penetration of exterior groundwater through said foundation and water vapor from said floor and into said crawlspace environment while providing a water flow space between the drainage panel and the foundation and floor for the escape of water and water vapor from beneath the drainage panel. The handbook teaches at basement 3 that it is known to have a vapor barrier have vertical extensions that extend up the basement walls to provide a continuous barrier against the penetration of water and water vapor into the basement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the handbook's teaching into Brand's invention and have Brand's panel have extensions that extend upward against the foundation walls, because by doing so the panel will prevent any water from passing through the walls and into the basement. Further, by having the panel on the inside of the walls, it will be better protected and less likely to be punctured than if the panel would be on the outside of the walls. When on the outside of the walls, the dirt

and rock backfill will be pressing against the panel and could puncture said panel causing it to leak and the basement/crawl space to get wet. It would also be obvious to one having ordinary skill in the art to place the panel on the inside and outside of the wall because this will provide a double layer of waterproofing. This is also shown by the handbook on page 150 of the basement 3 example.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogstad (5,107,642) in view of the Moisture Control Handbook "New, Low-Rise, Residential Construction" by Joseph Lstiburek with John Carmody, October 1991, hereafter referred to as "the handbook".

In regard to claims 1 and 3, Mogstad teaches a water-barrier and drainage system for preventing the penetration of water vapor and ground water into the crawlspace environment of a building, said crawlspace environment having a concrete floor 6 surrounded by a substantially continuous peripheral foundation 4 enclosing said crawlspace environment beneath the building, said system comprising a continuous embossed plastic drainage panel 10 (col. 1, lines 66-68) disposed against an upward facing surface of the floor so that the panel covers the upward facing surface of the entire floor of the crawlspace (col. 2, lines 1-7) so that the panel defines a continuous barrier surface that prevents penetration of ground water and water vapor there through and prevents penetration of groundwater and water vapor up through the floor and into the air space of the crawlspace, said plastic drainage panel being embossed (i.e. the knobs) to provide a plurality of spaced protuberances at the underside thereof forming legs which support the drainage panel spaced from the floor of the crawlspace (figure 1)

to provide a water flow space adjacent the floor for the drainage of water and water vapor which penetrates up through the floor of the crawlspace or through the walls of the crawlspace. Mogstad further discloses the use of vertical extensions which extend vertically up against the exterior peripheral foundation to a height above the floor/foundation interface to provide a continuous barrier against the penetration of exterior groundwater through said foundation and water vapor from said floor and into said crawlspace environment while providing a water flow space between the drainage panel and the foundation and floor for the escape of water and water vapor from beneath the drainage panel. Mogstad does not specifically teach that the extensions are part of the panel 10, or that they extend upward on the inside of the foundations walls. The handbook teaches at basement 3 that it is known to have a vapor barrier have vertical extensions that extend up the basement walls to provide a continuous barrier against the penetration of water and water vapor into the basement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the handbook's teaching into Mogstad's invention and have Mogstad's panel extensions extend upward against the inside of the foundation walls because, by doing so, the panel will prevent any water from passing through the walls and into the basement. Further, by having the panel on the inside of the walls, it will be better protected and less likely to be punctured than if the panel would be on the outside of the walls. When on the outside of the walls, the dirt and rock backfill will be pressing against the panel and could puncture said panel causing it to leak and the basement/crawl space to get wet. It would also be obvious to one having ordinary skill

in the art to place the panel on the inside and outside of the wall because this will provide a double layer of waterproofing. This is also shown by the handbook on page 150 of the basement 3 example.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (4,760,674) in view of the Moisture Control Handbook "New, Low-Rise, Residential Construction" by Joseph Lstiburek with John Carmody, October 1991, hereafter referred to as "the handbook" and further in view of Mogstad (5,107,642).

In regard to claim 3, Brand in view of the handbook disclose the basic claimed invention except for specifically disclosing that the floor is concrete. However, Brand does disclose the use of a concrete floor, but does not place the drainage system on top of the concrete floor. Mogstad teaches that it is known to place a drainage system on top of a concrete floor, figure 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place Brand's system on top of the concrete slab instead of below it because, as taught by Mogstad, the system will provide an air gap between the membrane and the structure against which it is mounted. The membrane will also serve as a moisture preventing barrier to dry the concrete.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (4,760,674) in view of the Moisture Control Handbook "New, Low-Rise, Residential Construction" by Joseph Lstiburek with John Carmody, October

1991, hereafter referred to as "the handbook" and further in view of Jennemann (5,836,815).

In regard to claims 4-6, Brand in view of the handbook disclose the basic claimed invention except for specifically disclosing the use of a peripheral drainage trench adjacent the interior wall of the foundation beneath the drainage panel to collect and drain any water from the water flow space and a sump pit with a sump pump and drain conduit to pump excessive amounts of water from the floor space. Jennemann teaches that it is well known in the art to provide a peripheral drainage trench adjacent the interior wall of a foundation, a sump pump, and a drain conduit, figures 1 and 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a trench, sump pump, and drain conduit into Brand's invention, because they will provide a well known means for removing water which builds up within the sump pit and in so doing, this will also remove excessive amounts of moisture from beneath the floor and building of Brand.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogstad (5,107,642) in view of the Moisture Control Handbook "New, Low-Rise, Residential Construction" by Joseph Lstiburek with John Carmody, October 1991, hereafter referred to as "the handbook" and further in view of Jennemann (5,836,815).

In regard to claims 4-6, Mogstad in view of the handbook disclose the basic claimed invention except for specifically disclosing the use of a peripheral drainage trench adjacent the interior wall of the foundation beneath the drainage panel to collect

and drain any water from the water flow space and a sump pit with a sump pump and drain conduit to pump excessive amounts of water from the floor space. Jennemann teaches that it is well known in the art to provide a peripheral drainage trench adjacent the interior wall of a foundation, a sump pump, and a drain conduit, figures 1 and 2. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a trench, sump pump, and drain conduit into Mogstad's invention, because they will provide a well known means for removing water which builds up within the sump pit and in so doing, this will also remove excessive amounts of moisture from beneath the floor and building of Mogstad.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (4,760,674) in view of the Moisture Control Handbook "New, Low-Rise, Residential Construction" by Joseph Lstiburek with John Carmody, October 1991, hereafter referred to as "the handbook" and the publication "Sealed Crawl Space Specifications by Craig DeWitt, PhD, PE, published August 20, 2001, hereafter referred to as "DeWitt".

In regard to claim 12, Brand teaches the claimed invention except for specifically disclosing that the foundation wall is covered with a plastic foam insulation board and the edges of the panel are sealed to the insulation board. The handbook teaches that it is known to place insulation against a foundation wall before the vapor panel is placed against said wall and seal the panel to the insulation (see basement 3 figure on page 150) and DeWitt teaches that it is known to use plastic foam insulation at bullet 12. Therefore, it would have been obvious to one having ordinary skill in the art at the time

the invention was made to place plastic foam insulation against the foundation walls and seal the panels to the insulation because the insulation will insulate the basement/crawlspace to provide a more constant temperature and by sealing all or any joints, the waterproofing system will prevent any water from outside the building from penetrating the inside of the building.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mogstad (5,107,642) in view of the Moisture Control Handbook "New, Low-Rise, Residential Construction" by Joseph Lstiburek with John Carmody, October 1991, hereafter referred to as "the handbook" and the publication "Sealed Crawl Space Specifications by Craig DeWitt, PhD, PE, published August 20, 2001, hereafter referred to as "DeWitt".

In regard to claim 12, Mogstad teaches the claimed invention except for specifically disclosing that the foundation wall is covered with a plastic foam insualtion board and the edges of the panel are sealed to the insulation board. The handbook teaches that it is known to place insulation against a foundation wall before the vapor panel is placed against said wall and seal the panel to the insulation (see basement 3 figure on page 150) and DeWitt teaches that it is known to use plastic foam insulation at bullet 12. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place plastic foam insulation against the foundation walls and seal the panels to the insulation because the insulation will insulate the basement/crawlspace to provide a more constant temperature and by sealing all or any

joints, the waterproofing system will prevent any water from outside the building from penetrating the inside of the building.

Claims 7-10 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (4,760,674) in view of the Builder's Foundation Handbook by John Carmody, Jeffrey Christian, and Kenneth Labs, published May 1991, hereafter referred to as "the foundation handbook".

In regard to claim 13, Brand discloses the basic claimed invention. The limitations of claim 13 can be seen and described in the above rejection of claim 1. Also, as set forth in the above rejection of claim 2, Brand does not disclose extensions extending on the inside of the foundation walls. The foundation handbook also teaches the same teaching as the handbook taught above in regard to claim 2. Thus, the extension limitations are rejected in view of the foundation handbook in the same manner they were rejected in view of the handbook above. Finally, Brand does not specifically teach that plastic foam insulation boards are attached to the drainage panel on surfaces opposite the foundation walls. The foundation handbook teaches that it is known to place insulation on a surface of a moisture barrier opposite the foundation wall, wherein the insulation is a plastic foam insulation board, see pages 51 and 52. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place foam insulation boards over the drainage panel extensions because, as is known in the art, the foam insulation boards will protect the drainage panel from becoming damaged or punctured.

In regard to claims 7, 9, 10, and 14, Brand in view of the foundation handbook disclose the basic claimed invention. The limitations of claims 7 and 14 are rejected as set forth above with respect to claim 13. Brand does not disclose that the water barrier and drainage system further comprises a durable plastic liner barrier layer over the entire embossed drainage panel on the floor and up over the plastic foam insulation board on the wall of the crawlspace, wherein the liner is formed from two or more wide strips having their edges overlapped and united. The foundation handbook further teaches that it is known to provide a liner barrier 16, page 52, over the insulation and over at least a portion of the drainage panel 18, page 52 and to overlap two or more strips at page 47, instruction 2, but does not disclose that it is plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the foundation handbook's teachings into Brand's invention and make it plastic and to have the liner extend over the entire embossed liner, because the use of a second moisture barrier will produce an even more effective moisture barrier for the foundation and the use of plastic as a moisture barrier is notoriously well known in the art. This is evidenced by Brand who uses a plastic embossed panel to prevent moisture.

In regard to claim 8, Brand in view of the foundation handbook disclose the basic claimed invention except for specifically disclosing that the plastic liner barrier layer is a multiply, fiber-reinforced, durable plastic film. The examiner takes Official Notice that fiber reinforced, multiply plastic films are old and well known in the moisture barrier art and it would have been obvious to use a barrier of such material because said material

will provide an excellent means to prevent moisture from entering a crawlspace or basement. Since the applicant did not argue the examiner's position, the examiner contends that the applicant's silence is an agreement that the examiner's position is correct and the above films are old and well known.

In regard to claim 15, Band in view of the foundation handbook disclose the basic claimed invention, wherein the drainage panel and the liner cover the entire surface of the foundation wall, up to the top thereof, and the plastic liner barrier layer extends up over the drainage panel and is sealed to the upper edge thereof to encapsulate the crawlspace, figure 3-11, item 16 (vapor retarder sealed to subfloor and floor joists).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (4,760,674) in view of the Builder's Foundation Handbook by John Carmody, Jeffrey Christian, and Kenneth Labs, published May 1991, hereafter referred to as "the foundation handbook" and further in view of Mogstad (5,107,642).

In regard to claim 11, Brand in view of the foundation handbook disclose the basic claimed invention except for specifically disclosing that the floor is concrete. However, Brand does disclose the use of a concrete floor, but does not place the drainage system on top of the concrete floor. Mogstad teaches that it is known to place a drainage system on top of a concrete floor, figure 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place Brand's system on top of the concrete slab instead of below it because, as taught by Mogstad, the system will provide an air gap between teh membrane and the structure against

which it is mounted. The membrane will also serve as a moisture preventing barrier to dry the concrete.

Claim 7-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogstad (5,107,642) in view of the Builder's Foundation Handbook by John Carmody, Jeffrey Christian, and Kenneth Labs, published May 1991, hereafter referred to as "the foundation handbook".

In regard to claim 13, Mogstad discloses the basic claimed invention. The limitations of claim 13 can be seen and described in the above rejection of claim 1. Also, as set forth in the above rejection of claim 1, Mogstad does not disclose that his extensions extend on the inside of the foundation walls. The foundation handbook also teaches the same teaching as the handbook taught above in regard to claim 1. Thus, the extension limitations are rejected in view of the foundation handbook in the same manner they were rejected in view of the handbook above. Finally, Mogstad does not specifically teach that plastic foam insulation boards are attached to the drainage panel on surfaces opposite the foundation walls. The foundation handbook teaches that it is known to place insulation on a surface of a moisture barrier opposite the foundation wall, wherein the insulation is a plastic foam insulation board, see pages 51 and 52. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place foam insulation boards over the drainage panel because, as is known in the art, the foam insulation boards will protect the drainage panel from becoming damaged or punctured.

In regard to claims 7, 9, 10, 11 and 14, Mogstad in view of the foundation handbook disclose the basic claimed invention. The limitations of claims 7 and 14 are rejected as set forth above with respect to claims 3 and 13. Mogstad does not disclose that the water barrier and drainage system further comprises a durable plastic liner barrier layer over the entire embossed drainage panel on the floor and up over the plastic foam insulation board on the wall of the crawlspace. The foundation handbook further teaches that it is known to provide a liner barrier 16, page 52, over the insulation and over at least a portion of the drainage panel 18, page 52 and to overlap two or more strips at page 47, instruction 2 but does not disclose that it is plastic or that it extends over the entire barrier layer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the foundation handbook's teachings into Mogstad's invention and make it plastic and to have the liner extend over the entire embossed liner, because the use of a second moisture barrier will produce an even more effective moisture barrier for the foundation and the use of plastic as a moisture barrier is notoriously well known in the art. This is evidenced by Mogstad who uses a plastic embossed panel to prevent moisture.

In regard to claim 8, Mogstad in view of the foundation handbook disclose the basic claimed invention except for specifically disclosing that the plastic liner barrier layer is a multiply, fiber-reinforced, durable plastic film. The examiner takes Official Notice that fiber reinforced, multiply plastic films are old and well known in the moisture barrier art and it would have been obvious to use a barrier of such material because said material will provide an excellent means to prevent moisture from entering a

crawlspace or basement. Since the applicant did not argue the examiner's position, the examiner contends that the applicant's silence is an agreement that the examiner's position is correct and the above films are old and well known.

In regard to claim 15, Mogstad in view of the foundation handbook disclose the basic claimed invention, wherein the drainage panel and the liner cover the entire surface of the foundation wall, up to the top thereof, and the plastic liner barrier layer extends up over the drainage panel and is sealed to the upper edge thereof to encapsulate the crawlspace, figure 3-11, item 16 (vapor retarder sealed to subfloor and floor joists).

Response to Arguments

Applicant's arguments with respect to claims 1 and 3-15 have been considered but are not persuasive.

In regard to the applicant's argument with respect to claims 1, 7, 13 and 14 that the references of record do not disclose a drainage panel having vertical extensions, the examiner respectfully disagrees. In the above rejections, the examiner has clearly pointed out the teachings of the combination of references. The examiner admitted that neither Brandt nor Mogstad taught vertical extensions on the interior of the foundation wall. However, both "the handbook" and "the foundation handbook" teach that it is known to place insulation and vapor barriers against the interior surface of a foundation wall. Therefore, when the teachings of the references are taken together, the claimed limitations are met and taught by said references. The examiner has explained the combination of references above and will not do so again here.

Further, the examiner would like to state that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN E. GLESSNER whose telephone number is (571)272-6754. The examiner can normally be reached on Monday through Wednesday and Friday 6:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian E. Glessner
Primary Examiner
Art Unit 3633

/Brian E. Glessner/
Primary Examiner, Art Unit 3633